

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

Criminal Action

vs.

No. 14-00019

MICHAEL J. FREE,

Defendant.

Transcript of SENTENCING HEARING held on Thursday,
January 26, 2017, in the United States District Court,
700 Grant Street, Pittsburgh, Pennsylvania, before
The Hon. Mark R. Hornak, United States District Judge

APPEARANCES:

For the Government:

James R. Wilson, Esq.
United States Attorney's Office
700 Grant Street, Ste. 4000
Pittsburgh, PA 15219

For the Defendant:

Martin A. Dietz, Esq.
The Mitchell Building
304 Ross Street, Ste. 505
Pittsburgh, PA 15219

Court Reporter:

Deborah Rowe, RMR, CRR
700 Grant Street, Ste. 5300
Pittsburgh, PA 15219
(412) 471-2510

Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription

1 P R O C E E D I N G S

2 (1:56 p.m.; in open court, Defendant present:)

3 THE COURT: Good afternoon, everybody. We're here
4 this afternoon in the case of the United States of America
5 versus Mr. Michael Free pending on the docket of the Court at
6 14-CR-0019. Will counsel for the United States please enter
7 his appearance?

8 MR. WILSON: Good afternoon, Your Honor. James
9 Wilson on behalf of the United States.

10 THE COURT: Good afternoon, Mr. Wilson. And who's
11 seated with you at counsel table today?

12 MR. WILSON: Your Honor, I hope the Court remembers
13 the Special Agent from the FBI, Sean Langford. Also here is
14 the forensic accountant, Lisa Ubinger, seated in the gallery,
15 Your Honor.

16 THE COURT: Good afternoon, Mr. Langford. Good
17 afternoon, Miss Ubinger. And will counsel for Mr. Free
18 please enter his appearance?

19 MR. DIETZ: Martin Dietz on behalf of Mr. Free
20 seated next to me at counsel table.

21 THE COURT: Mr. Dietz, good to see you, and good
22 afternoon, Mr. Free.

23 Mr. Dietz and Mr. Wilson, other than any need you
24 might have to call witnesses or anything like that, do you
25 have an objection if we handle today's proceedings with

1 everyone keeping their seat at counsel table? Does that work
2 for you, Mr. Wilson?

3 MR. WILSON: Fine. Thank you, Your Honor.

4 THE COURT: Does that work for you, Mr. Dietz?

5 MR. DIETZ: Yes, Your Honor.

6 THE COURT: Mr. Free and counsel, if everyone would
7 slide the microphones in so we can make sure we hear
8 everyone, that would be great.

9 Mr. Free, as we get started today, there are a
10 number of questions I need to go over with you. So I am
11 going to ask my deputy to administer an oath. You can keep
12 your seat, sir.

13 (The Defendant was duly sworn.)

14 MR. BABIK: Please state your name for the record.

15 THE DEFENDANT: Michael James Free.

16 MR. BABIK: Thank you.

17 THE COURT: Mr. Free, as we get started today,
18 there are several matters I want to confirm on the record.
19 Just to confirm, you are represented by a lawyer. That
20 lawyer is Mr. Martin Dietz. And Mr. Dietz is seated right
21 next to you at counsel table; is that correct, sir?

22 THE DEFENDANT: That's correct.

23 THE COURT: And Mr. Free, do you understand that
24 you're here in Federal court today for sentencing by this
25 Court?

1 THE DEFENDANT: Yes, sir. I do.

2 THE COURT: And have you had enough time and
3 opportunity to talk about today's hearing in your case with
4 your lawyer, Mr. Dietz?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: And are you satisfied with the job that
7 Mr. Dietz has done for you as your lawyer?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Okay. Mr. Free, let me ask you this,
10 sir. Are you now or in the recent past been under the care
11 of a doctor or psychiatrist, psychologist or therapist?

12 THE DEFENDANT: Doctors.

13 THE COURT: Okay. Are you currently under the care
14 of a medical doctor?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Could you generally tell us the
17 situations that you're receiving medical care for?

18 THE DEFENDANT: Your Honor, many years ago I was
19 hit by a drunk driver head on. The young fellow that hit me
20 was killed instantly, and I got hurt very, very bad, wasn't
21 expected to live.

22 My knees were broken. My right ankle was cut in
23 half. But the main thing is my femur bone was broke at the
24 hip and came out my pelvis. It broke my pelvis in half more
25 or less. My pelvis is severely distorted, which prevents me

1 from getting an artificial hip, which I need. My left leg is
2 four inches shorter.

3 My -- also my right arm was severed. Dr. Selim
4 El-Attrache re-attached my arm for me. I have a lot of
5 problems with my hand and so on, but I'm lucky to have an
6 arm. And I'm in the American Medical Journal, by the way,
7 for that. I can move my fingers.

8 I'm also in need of a right shoulder surgery. I'm
9 also in need of -- a severe hernia that I need to address, I
10 need to have taken care of.

11 Since I turned -- I had to drop my health insurance
12 a few years ago. I couldn't afford it any more. It got so
13 expensive, but now I'm eligible for Medicare. So I can maybe
14 get some of these things taken care of. The pelvis is a real
15 problem and so on.

16 I've also been seeing a urologist.

17 THE COURT: Neurologist?

18 THE DEFENDANT: Urologist.

19 THE COURT: Urologist?

20 THE DEFENDANT: Urologist, yes. I think that's
21 probably about it.

22 THE COURT: Okay. I appreciate that, Mr. Free.
23 Let me ask you this, sir. Are you taking any medicines or
24 medication for any of those things or anything else?

25 THE DEFENDANT: Doctor -- I mean, Your Honor, when

1 I was in the hospital, I got addicted to morphine in the
2 hospital. I was there for three and a half months. And --

3 THE COURT: This is at the time of the accident?

4 THE DEFENDANT: After the accident, yes, sir. I've
5 never used drugs. I've never done anything. I've never
6 smoked a cigarette or anything. So I'm reluctant to take
7 anything. I do take some Aleve and so on.

8 And sometimes doctors are reluctant, based on the
9 fact that I had an addiction to morphine that was prescribed
10 to me in the hospital -- I never purchased it outside of a
11 hospital or anything like that. I was in -- but so sometimes
12 they're reluctant to prescribe any kind of medication. They
13 tell me to just take some Aleve and do the best you can,
14 which I do.

15 THE COURT: And Aleve is an over-the-counter
16 anti-inflammatory pain medication?

17 THE DEFENDANT: Yes. It seems to work the best for
18 me. Yes, sir.

19 THE COURT: Okay. Let me ask you this, Mr. Free.
20 As a result of the situations that you've explained in some
21 detail, taking Aleve or anything else, is any of that causing
22 you today to have any difficulty at all in understanding
23 what's going on around you?

24 THE DEFENDANT: No, Your Honor.

25 THE COURT: Okay. I appreciate that, Mr. Free.

1 Mr. Dietz, based on everything you know, do you have any
2 doubts as to Mr. Free's competence to participate in today's
3 hearing?

4 MR. DIETZ: No, Your Honor.

5 THE COURT: Okay. Thank you, Mr. Dietz.

6 Mr. Wilson, based on everything you know, do you have any
7 doubts as to Mr. Free's competence to participate in today's
8 hearing?

9 MR. WILSON: I have no basis to doubt his
10 competence, Your Honor.

11 THE COURT: Thank you, Mr. Wilson.

12 Mr. Free, based on my personal observations here in
13 court, your answers to my questions, the information
14 available to the Court in the record, the representations of
15 your lawyer and the lawyer for the United States, I find that
16 you are competent to participate in today's proceedings.

17 While I'm quite confident all counsel carefully
18 reviewed the relevant matters that are in the court records
19 and on the docket of the Court, I'll highlight several of
20 them.

21 We're here today based on a Judgment and Remand
22 Order of the United States Court of Appeals for the Third
23 Circuit entered October 28, 2016, vacating the Court's prior
24 judgment of sentence and remanding the proceedings to this
25 Court for further proceedings consistent with the Court of

1 Appeals' opinion of that date.

2 Relative to sentencing, back on December 16, 2014,
3 a jury duly impaneled in this District at the conclusion of a
4 trial rendered verdicts of guilty on each of Counts 1 through
5 6 of the relevant charging document in this case, Counts 1
6 through 4 inclusive charging violations of Title 18 of the
7 United States Code, Sections 157 and 2; Count 5 charging a
8 violation of Title 18 of the United States Code, Section 152
9 Subsection 1 and Section 2 of Title 18; and Count 6 charging
10 a violation of Title 18 of the United States Code, Section
11 152 Subsection 2.

12 Thereafter, the Probation Department, which is
13 represented today by United States Probation Officer Stephen
14 Lowers, prepared and made available to all counsel and the
15 Court a presentence report on March 10, 2015, along with an
16 addendum to that report on March 31 of 2015.

17 Through counsel Mr. Free has filed position
18 statements relevant to sentencing on both July 13, 2015, and
19 then December 13, 2016, at the request of the Court after the
20 Remand Order from the Court of Appeals.

21 Mr. Wilson on behalf of the United States likewise
22 filed position statements relative to sentencing on July 13,
23 2015 and then again on December 28, 2016, also in response to
24 the directive of the Court.

25 The Court issued its tentative findings relative to

1 the initial sentencing proceeding on July 31, 2015. The
2 Court issued tentative findings yesterday, January 25, 2017,
3 specifically related to today's sentencing hearing.

4 Mr. Wilson, sir, have you reviewed each of the
5 documents to which I've made reference?

6 MR. WILSON: I have, Your Honor.

7 THE COURT: And does the United States have any
8 objections to the matters stated in any of them?

9 MR. WILSON: Are you referencing the Court's own
10 tentative findings?

11 THE COURT: Including those, but anything else, the
12 presentence report, the addendum.

13 MR. WILSON: Your Honor, I have a very, very minor
14 matter relative to the Court's tentative findings --

15 THE COURT: Okay. Happy to hear it, Mr. Wilson.

16 MR. WILSON: At page 3 of Document 140, which is
17 the Court's most recent tentative findings, in the first full
18 paragraph on the page, the middle of the paragraph, the
19 sentence reads -- I'll wait for you to get there --

20 THE COURT: I'm there.

21 MR. WILSON: -- "the Court finds and concludes that
22 the Defendant purposely intended and sought to inflict
23 pecuniary harm in an amount of at least \$400,000 on the
24 bankruptcy estate and ultimately the creditors," et cetera.

25 Your Honor, having read all of the Court's

1 tentative findings, I believe what the Court means is "of
2 more than \$400,000." And I reference 2B1.1(b)(1)(H) in that
3 regard.

4 All of the 2B1.1 dollar demarcations are relative
5 to more than a certain amount. And I don't mean to be overly
6 picky here, Judge. It's just that if it's left at \$400,000,
7 I'm thinking of the record, and I don't want to afford a
8 foothold for an appellate issue that the Court didn't mean to
9 be there.

10 THE COURT: I appreciate that, Mr. Wilson. I'm
11 looking at -- and you're referencing Section 2B1.1, the loss
12 table contained at Subsection (b)(1) of that in the 2014
13 Guidelines Manual?

14 MR. WILSON: Correct, Your Honor.

15 THE COURT: And that appears on page 81 of the
16 purple 2014 Guidelines Manual. I would -- based on all of
17 the tentative findings that are set forth in the specific
18 findings, including the finding that if the 2016 Guideline
19 Manual were applicable, the loss amount intended was of at
20 least \$550,000, the Court corrects its tentative findings,
21 and on page 3 reflects that the amount of intended loss,
22 intended and sought to be inflicted in terms of pecuniary
23 harm, exceeded \$400,000.

24 MR. WILSON: Thank you, Your Honor.

25 THE COURT: Anything else, Mr. Wilson?

1 MR. WILSON: Nothing. Thank you.

2 THE COURT: Okay. Mr. Dietz, have you reviewed
3 each of the documents to which I've made reference, and have
4 you reviewed each of them with your client, Mr. Free?

5 MR. DIETZ: I have, Your Honor.

6 THE COURT: Okay. And Mr. Free, not that I doubt
7 your lawyer, Mr. Dietz, at all, but just to confirm, have
8 you, in fact, reviewed with your lawyer each of the documents
9 I've made reference to, and in particular the presentence
10 report, the addendum to the presentence report and the
11 Court's tentative findings?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Thank you, Mr. Free.

14 And Mr. Dietz, does the defense have any objection
15 to any of the matters set forth in the documents to which
16 I've made reference?

17 MR. DIETZ: We do, Your Honor. And I don't want to
18 rehash history because I think a lot of the issues -- our
19 objection is already preserved and litigated in the Third
20 Circuit, but we did have objections to the presentence
21 report. We filed our objections. You ruled on them.

22 More specifically, with respect to -- and as the
23 Court's aware, in the original tentative findings, we
24 objected to the loss amount, and we maintain our objection to
25 the loss amount today, Judge.

1 In the Court's tentative findings, I understand
2 that the Court has found that Mr. Free has intended a loss
3 of --

4 THE COURT: Tentatively, subject to whatever --

5 MR. DIETZ: Right, right. Tentatively, but we do
6 object to those tentative findings with respect to the amount
7 of loss because we do still believe it's zero in this case.

8 Additionally, Judge, we -- even though this was a
9 tentative -- probably a tentative-tentative finding, with
10 respect to the end of the tentative findings, where the Court
11 indicated that even if the Court did find that the loss in
12 this case was zero, it believed that an upward departure
13 would be warranted in this case, and it would take with it
14 the advisory guideline range calculated by the Court.

15 We would -- just for purposes of right now, we
16 would object that an upward departure would be warranted if
17 that were the case.

18 THE COURT: Understood, Mr. Dietz. And we'll make
19 sure that we have an opportunity to hear from both you and
20 Mr. Wilson further in those regards later in the proceeding.

21 Let me ask a more precise question, Mr. Dietz. And
22 I understand the objections that you've made to the Court's
23 calculation and use of the loss amount, the loss amount table
24 as set forth in the tentative findings. We may hear more
25 from you on that.

1 You've objected to the Court's finding and
2 conclusion -- tentative finding and conclusion that if I
3 concluded that the loss amount should be treated as zero,
4 that the resulting advisory guideline range -- I've
5 tentatively noted in my belief that that would not be
6 sufficient to -- a sentence based on that would not be
7 sufficient to fulfill the purposes of sentencing.

8 Are there any factual matters recited in the
9 presentence report or otherwise of what happened that you
10 have an objection to at this time?

11 MR. DIETZ: I don't believe so, Judge, subject to
12 any objections that I had previously made that were resolved.

13 THE COURT: Okay. That have already been resolved.

14 MR. DIETZ: Yes. no additional objections.

15 THE COURT: All right. Are there any that -- so I
16 can make sure that I'm operating with the correct factual
17 premise, my belief at the moment in terms of the facts
18 reported in the presentence report of historical events
19 occurring, my understanding is that I can accept those as
20 being true.

21 The legal consequence of those historic facts were
22 the guts, if you will, of the Defendant's objections at the
23 first sentencing and perhaps today. Is my understanding in
24 that regard correct?

25 MR. DIETZ: That's correct, Judge. I think -- and

1 I don't know if this helps or hurt, but I think, as we sit
2 here today, nothing has changed factually between the last
3 sentencing and today. I don't know if that helps the Court.

4 THE COURT: It helps.

5 MR. DIETZ: That's my position.

6 THE COURT: Okay. That helps, Mr. Dietz. What I
7 would ask is if during the course of the sentencing
8 proceeding there are particular facts as recited in the
9 presentence report, the addendum, the tentative findings of
10 the Court or anywhere else in the record that you believe are
11 inaccurate or the Court should not rely on, I'd ask you to
12 bring those specifically to the Court's attention so that I
13 can make sure that, one, I make some ruling, if one is
14 necessary or appropriate in that regard, and then, consistent
15 with any ruling that I make, that I give them the appropriate
16 weight and treatment in the context of the judgments to be
17 made today. I appreciate that, Mr. Dietz.

18 I would confirm for the record that the sentencing
19 guidelines published and prepared by the United States
20 Sentencing Commission have by decisions of the Supreme Court
21 been declared to be advisory to the Court. Among other
22 things, that means that those guidelines are no longer
23 mandatory, and a sentencing Court may not presume or take for
24 granted that the advisory guideline range or a particular
25 guideline sentence is reasonable in a specific case.

1 Therefore, the guidelines are not only no longer
2 mandatory, they're not presumed to be reasonable in a given
3 case.

4 Mr. Wilson and Mr. Dietz, the Court believes for
5 the reasons I've stated in the tentative findings in terms of
6 the mathematical calculation of the advisory guideline range
7 that the Court is obligated to consider and to utilize the
8 2014 Sentencing Guideline Manual -- is that correct,
9 Mr. Wilson? Do you agree with that?

10 MR. WILSON: I agree, Your Honor, and I would note
11 that my reference in my own submission to the Court about the
12 change in the guidelines was not consistent with Norwood, and
13 I yield to the Court's understanding in that regard.

14 THE COURT: Okay. Thank you, Mr. Wilson.

15 Mr. Dietz, do you agree that the operative
16 guideline manual for the arithmetical calculation of the
17 advisory guideline range and the consideration of application
18 notes and the like is the 2014 guideline manual?

19 MR. DIETZ: I do, Your Honor.

20 THE COURT: Mr. Wilson, for purposes of the Victim
21 Notification Act, are there any identifiable victims of the
22 crime for whom notice of today's hearing was required to be
23 given? And if so, was such notice provided?

24 MR. WILSON: Yes, Your Honor.

25 THE COURT: Okay. Thank you. I would ask -- I

1 would make a public outcry in the courtroom. Is there anyone
2 in the courtroom present today that is or is a representative
3 of a victim of the offenses of conviction here?

4 (No response.)

5 THE COURT: The Court would note for the record
6 that in response to the Court's public outcry, there were no
7 such responses.

8 I would confirm for the record that I've reviewed
9 the complete file in this case. That includes but is not
10 limited to the presentence report, the addendum, each and
11 every position statement submitted by the parties, the record
12 that was available to the Court based on the Court's being
13 the presiding judicial officer during the trial of the case,
14 the decisions of the United States Court of Appeals for the
15 Third Circuit, and the initial recommendation from the
16 probation office.

17 I would confirm and order, as I did at the first
18 sentencing hearing, pursuant to Federal Rule of Criminal
19 Procedure 32(e)(3) and the now applicable local rules of this
20 Court, that recommendation is not disclosed to counsel for
21 the United States or to the Defendant or his counsel. But I
22 will confirm on the record, Mr. Free, and counsel, that I
23 have not considered and will not consider any factual or
24 legal matter that has not been disclosed to the Defendant and
25 to all counsel.

1 Mr. Wilson, does the United States have any motion
2 for a formal departure, as that term is used under the
3 sentencing guidelines?

4 MR. WILSON: No, Your Honor.

5 THE COURT: Mr. Dietz, does the Defendant have any
6 motion for a formal departure, as that term is used under the
7 sentencing guidelines?

8 MR. DIETZ: No, Your Honor.

9 THE COURT: Okay. Mr. Wilson, based on the Court's
10 examination of the record, it does not appear that Congress
11 by statute has set any mandatory minimum term of imprisonment
12 as to any count of conviction in this case. Do you believe
13 the Court's understanding is correct?

14 MR. WILSON: Yes, Your Honor.

15 THE COURT: Mr. Dietz, same question of you?

16 MR. DIETZ: Yes, Your Honor.

17 THE COURT: Okay. Subject to the matters that may
18 be raised during the hearing today that would result in or
19 require a correction or amendment to them, the Court adopts
20 its tentative findings factually and as to the applicable
21 legal principles, subject to the arguments that will be made
22 by counsel today and hearing directly from Mr. Free during
23 allocution, and does likewise with the matters set forth in
24 the presentence report and the addendum.

25 At this time we'll hear from counsel regarding any

1 matters they want to bring to the Court's attention regarding
2 sentencing in this case. We'll start with Mr. Dietz.

3 When Mr. Dietz tells me he's done, I'll then
4 address you personally and directly, Mr. Free. That will be
5 your opportunity to tell the Court anything, absolutely
6 anything at all you want me to know or be aware of in making
7 any determination in this case.

8 We'll then make sure Mr. Dietz has any further
9 opportunity when you're done doing that. And then I'll turn
10 to Mr. Wilson, and I'll hear from Mr. Wilson on behalf of the
11 United States, and we'll make sure that both Mr. Wilson and
12 Mr. Dietz have a full, final and complete opportunity to tell
13 the Court anything the Court should be aware of in terms of
14 sentencing.

15 So with that, Mr. Dietz, the floor is yours, sir.

16 MR. DIETZ: Thank you, Your Honor. Judge, at this
17 point I would just incorporate the position I previously
18 filed with respect to the sentencing factors, my memorandum
19 in aid of sentencing and the position statement that I
20 previously filed and any comments I made at the prior
21 sentencing.

22 Judge, in the tentative findings, the Court has
23 made a specific finding that Mr. Free intended to inflict
24 harm in the range of \$400,000 to a million dollars by
25 concealing assets during the course of his bankruptcy case.

1 Judge, we don't agree with the Court. I would like
2 to point out to the Court that originally Mr. Free filed a
3 bankruptcy petition under Chapter 13. He was attempting to
4 reorganize. That's what a Chapter 13 bankruptcy is. I think
5 the record reflects that. He wasn't seeking to discharge any
6 debt at that time.

7 And the jury verdict has spoken, and there's no
8 question that he did not disclose all his assets on his
9 original petitions.

10 I noted that in its tentative findings the Court
11 referenced the fact that on the original petitions Mr. Free
12 listed about \$600,000 in debt. And that's true, that the
13 overwhelming majority of that debt was based on mortgages he
14 had on the two properties.

15 What's interesting, Judge, he also listed assets of
16 a value of \$1.6 million. So even on that initial -- his
17 initial filings, he listed assets that were about a million
18 dollars in excess of the debts.

19 Shortly after he filed bankruptcy, the issues --
20 there was a settlement between the trustee and S&T Bank, and
21 those properties were removed from the bankruptcy. So that
22 left about half a million dollars worth of assets, about
23 \$70,000 worth of debt.

24 THE COURT: How much in assets, Mr. Dietz?

25 MR. DIETZ: Just around a half a million dollars

1 worth of assets.

2 And then, as the jury verdict reflects, I think
3 beginning around March of 2011, Mr. Free engaged in a manner
4 of conduct that concealed assets from the Bankruptcy Court.

5 This Court has made a finding that the assets -- by
6 virtue of the fact that he concealed these assets, he was
7 intending to cause pecuniary harm to the creditors. And
8 Judge, I would point out the obvious that I probably beat
9 with a dead horse, every creditor was paid in this case. So
10 we're not even talking about actual loss any more.

11 With respect to the harm to creditors, Judge, we
12 have a situation where Mr. Free prepares and files petitions,
13 lists his debts, lists his creditors, and I still submit,
14 Judge, from day one, there was no risk that his creditors
15 were not getting paid.

16 Regardless of whether you take the \$600,000 worth
17 of debt or lowered that after those properties were settled
18 out of the Bankruptcy Court, there was still never any risk
19 that they wouldn't get paid.

20 Judge, I would submit by virtue of the fact that he
21 disclosed \$250,000 worth of guns, some of which were sold,
22 that his intent -- and disclosing \$250,000 worth of guns,
23 plus the property, knowing that there's only \$70,000 worth of
24 debt left, was not to cause any pecuniary harm to a creditor.

25 THE COURT: Let me ask you this, Mr. Dietz. Along

1 those lines and I suspect some other lines that were laid out
2 in your sentencing memo, going back and rereading Feldman and
3 rereading Feldman in the context of Judge Fuentes' opinion in
4 this case, and what I've reflected in the tentative findings,
5 is that in Feldman, Judge Becker writing for the Court of
6 Appeals said that the inference of the intent to cause harm,
7 pecuniary harm, could be drawn from in that case at least two
8 and possibly a third factor:

9 One, what Judge Becker described as the large
10 amount of assets which were concealed, which I believe were
11 considerably less than the value here, but what he viewed as
12 a large amount, coupled with the fact that the bankrupt
13 debtor did not disclose two Jaguar automobiles, which tied in
14 with Mr. Feldman's explanation in his case that the reason
15 the assets were not disclosed was his belief that they were
16 exempt from the bankruptcy proceedings; and Judge Becker said
17 that Judge Kaufmann, who was the sentencing Judge in Feldman,
18 drew a permissible inference that the intention to cause
19 pecuniary harm could be drawn from the coupling of the large
20 amount of assets concealed and the fact the assets concealed
21 included two things that by no stretch came within the
22 explanation offered by Mr. Feldman, that is, what I didn't
23 disclose didn't have to be disclosed because it was exempt.

24 And then, although Judge Becker did not expressly
25 state it in Feldman, he then in some footnotes and elsewhere

1 in the opinion appears -- and I draw the inference that one
2 of the other things the Court was speaking of in Feldman is
3 that there appeared to be no factual or legal basis for
4 Mr. Feldman or anybody else to think that any of the assets
5 were exempt. So it was sort of like the explanation didn't
6 hold water, if you will.

7 In this case, taking the numbers that you've laid
8 on the table as being correct, Mr. Free nonetheless concealed
9 under any standard, but certainly under the Feldman standard
10 from this Court's position, a large number of assets.

11 He then continued to do so, and I guess -- I don't
12 know whether this is allegorical or metaphorical to the
13 Jaguars in Feldman, after the trustee on the record reads
14 Mr. Free the riot act, if you will, and confirms the law, I
15 think I believe I said figuratively and literally that he
16 could not convert any of the assets, Mr. Free, as the jury
17 found beyond a reasonable doubt, continued to conceal the
18 assets.

19 And he sold assets, which I've indicated in the
20 tentative findings I believe leads to the inference that no
21 matter how mathematically and logically correct your
22 statement is, once that happened, he set on a course to take
23 absolutely no chances that he would forfeit control of his
24 assets.

25 And for the reasons that I've noted, based on

1 Trustee Walsh's testimony, I believe he said it was by a
2 factor of 15 if my recollection is correct, that the expenses
3 of the administration of the estate here soared, Mr. Free
4 intended to take no chances.

5 And the natural and probable consequence of that,
6 whether it actually occurred or not, was that the creditors
7 would be harmed; and Judge Fuentes in the case here directed
8 me, I believe, to also consider the gain to Mr. Free and that
9 no matter the mathematical ratios that you've identified
10 between then-existing debts and then-existing assets,
11 particularly after Mr. Walsh issued the stern, unequivocal
12 on-the-record warning, Mr. Free continued on.

13 And isn't that a basis from which the Court can and
14 should draw the fairly strong inference he intended to hurt
15 whoever needed to be hurt so long as he got to keep his
16 property, particularly the historic firearms? And beyond
17 that and separately and distinctly, under what Judge Fuentes
18 has said in this case, relying on Feldman, that he intended
19 to cause that gain to himself in those valuations? I mean
20 isn't that the inference?

21 MR. DIETZ: Judge, if I may --

22 THE COURT: Absolutely. The floor is yours.

23 MR. DIETZ: -- I view gain as I read these opinions
24 -- the trouble I have with just saying, hey, any time a
25 bankruptcy debtor conceals assets, he's trying to gain. I

1 would submit that any bankruptcy debtor concealing any asset
2 is trying to gain something by that concealment.

3 So I think the Third Circuit's opinion in our case
4 says, hey, we can't just say that somebody concealing assets
5 is intending a loss --

6 THE COURT: Agreed.

7 MR. DIETZ: The one thing about -- I mean for
8 example, at the time Mr. Free is concealing assets, there's
9 only \$70,000 worth of debt -- creditors in the bankruptcy
10 statement. At the time he's doing that, there's only \$70,000
11 out there.

12 So the question becomes -- and I'm going to break
13 them down. I'm going to break it down as opposed to the
14 intended loss because the way I view it, if he knows he owes
15 \$70,000 to the creditors, and he's claimed a half a million
16 dollars worth of assets, they're listed, twenty-some guns are
17 listed there, and he's concealing other assets, I don't
18 believe he's intending to cause any pecuniary harm to the
19 creditors because in his mind I have enough assets out there
20 to pay them back.

21 Now, I think as far as intended loss goes, I think
22 he intends the loss --

23 THE COURT: I'm not disagreeing that that is an
24 inference, but there is nothing on the record as to what is
25 in Mr. Free's mind, and I do not say that in contradiction of

1 the critical portions of the Fifth Amendment. You're saying
2 I should draw that inference, but it also relies to a degree
3 on a fact not in the evidentiary record, that is, what
4 Mr. Free's thinking was.

5 MR. DIETZ: And I --

6 THE COURT: I understand that.

7 MR. DIETZ: This courthouse has fielded many, many
8 hearings based on intent. That's for sure. But I still
9 don't believe the record shows that he intended to defraud
10 his creditors, the \$70,000 worth out there.

11 Now, gain, I'll concede gain is a little trickier.
12 It is a little trickier because I think you could make the
13 argument that any time anybody conceals an asset, they're
14 trying to derive some gain from that. Is it a financial
15 gain? I don't know, number one.

16 I don't -- and again, we don't know what's in
17 Mr. Free's head. Or was it a desire to maintain his
18 priceless heirlooms? I don't know the answer to that.
19 There's property involved also as well. But --

20 THE COURT: Well, let me stop you just on that
21 point. Isn't it true that it could -- on the record now
22 before the Court, it could be both?

23 Certainly from the magnitude and precision with
24 which Mr. Free had accumulated and maintained his collection,
25 a fair inference is that his having that collection was of

1 some -- more a tangible benefit to him. It was something
2 important to him, just as somebody that might choose to
3 collect coins, and other people may choose to collect other
4 items that are generally described as collectibles.

5 But isn't it also true that there's evidence in the
6 record of direct pecuniary gain in that Mr. Free sold for
7 cash a number of the concealed assets?

8 So beyond the emotional or psychic value of having
9 this really almost historic collection of firearms, there's
10 record evidence of conduct here of deriving direct pecuniary
11 gain and a desire to do that, as evidenced by his
12 post-warning, post-admonition sale of firearms that had not
13 yet been disclosed? So isn't there evidence in the record of
14 both?

15 MR. DIETZ: Well, I think that -- candidly there
16 may be, but I believe -- there's an additional step. We're
17 talking about gain.

18 I believe there should be some link between that
19 gain causing a detriment to the creditors. Even if he were
20 intending to achieve some sort of gain by concealing those
21 assets, I don't believe that gain caused any detriment to his
22 creditors.

23 THE COURT: Under that theory, Mr. Dietz, though,
24 wouldn't the prosecution have to necessarily wait until the
25 final, conclusive termination of a bankruptcy proceeding,

1 because until it is done, ribbon tied, snugged up, we don't
2 know for sure in any case more broadly speaking -- now, based
3 on Trustee Walsh's testimony, which the Court found to be
4 credible, this case was exceptional in his experience in that
5 the energy devoted to administration and, therefore, the cost
6 of administration in some ways was growing like top seed,
7 derived in large measure from the conduct of Mr. Free?

8 So no one should be sanguined -- no matter the --
9 at any moment in time the ratio between debts and
10 liabilities, no reasonable person should have been sanguined
11 that the concealed assets wouldn't be necessary for the
12 trustee and for the creditors because until this case was
13 done, particularly given this concealing and duplicitous
14 activity, there could be no confidence of that.

15 And that's why the observation I made in the
16 tentative findings -- and I appreciate your reaction to it
17 and Mr. Wilson's when it's his turn -- that what became
18 clear -- would seem to be clear to the Court based on the
19 record testimony, the findings of the jury and all of the
20 other matters properly in the record, is that Mr. Free had
21 set about a course of conduct that, among other things, had
22 as its goal taking absolutely no chances.

23 And if that meant that the natural and probable
24 consequence of his conduct carried out was the creditors
25 could be left upside-down or the trustee's expenses unpaid,

1 that's the way the cookie crumbled.

2 MR. DIETZ: I don't view it that way because -- and
3 the only reason is because the value of the creditors' claims
4 was so low. By the time he's playing games with the trustee,
5 we're talking about \$70,000 at this point. And the trustee
6 had assets sufficient enough to pay those creditors.

7 THE COURT: Doesn't that go to the impossibility
8 phraseology that's used in the intended loss, that it doesn't
9 matter if the loss is either improbable or even impossible?

10 MR. DIETZ: Well, I don't think it applies in that
11 context. I think that that area of law is basically designed
12 for somebody who thinks they can commit a fraud for a hundred
13 million dollars, sets it into place maybe to defraud a bank
14 or something like that. And there's evidence that we clearly
15 intended to defraud this bank of \$100 million, and they end
16 up getting \$2 million.

17 I think in that case, because it would have been
18 impossible to get the \$100 million, if they were intended to
19 obtain \$100 million, I think it applies in that context. I
20 don't think that --

21 THE COURT: What if the bank or the rich person
22 doesn't have \$100 million and the person wants to get \$100
23 million, and it turns out that all the blood in the turnip,
24 if you will, is \$2 million? The fact that they were wrong,
25 that the victim of the trickster or, as Judge Fuentes said,

1 the fraudster, didn't have the money, doesn't really go to
2 intent. It goes to whether they could have pulled it off;
3 doesn't it?

4 MR. DIETZ: Well, if the intent was to obtain the
5 \$100 million, I think it would go to intent. The other
6 issue here --

7 THE COURT: Well isn't the intent in that case to
8 get all you can?

9 MR. DIETZ: Possibly. My example was focused on
10 \$100 million --

11 THE COURT: Understood.

12 MR. DIETZ: In that context, I would agree with the
13 Court. But the one thing we know for sure in this case, we
14 know what the creditor debt was. We know what that was.
15 There is -- there was no impossibility here. There wasn't --
16 this isn't -- I mean we knew --

17 THE COURT: But the cost of administration gets put
18 into the estate. So whether it's the creditors or the cost
19 of administration, the assets are exposed to the final
20 reconciliation of the estate, which is the discharge of the
21 debts and the payments to the creditors and all of the
22 approved costs of administration which, if I recall, ran into
23 several hundreds of thousands of dollars here.

24 MR. DIETZ: Right. And the problem with that, and
25 what truly makes this case unique, is those expenses weren't

1 even cognizable until they discovered the concealment, and
2 those expenses only occurred after the concealment. So I
3 don't think they would be reasonably foreseeable at that
4 point, but --

5 THE COURT: I'm not so sure.

6 MR. DIETZ: There's no question they occurred.

7 THE COURT: And I understand that, Mr. Dietz. And
8 noted -- and certainly this goes for Mr. Wilson also. This
9 is a complex case factually and legally. And no apologies
10 are needed either in advance or retrospectively from you or
11 Mr. Wilson for laying out the examples to go through this.

12 But it does seem to me that it's not unreasonable
13 for the law and the Court to conclude that if we have a
14 situation in which assets substantially exceed creditor debt,
15 and then somebody begins a campaign of chicanery, as I've
16 described it in the tentative findings, that not unexpectedly
17 at all it drives up the cost of administration, which is a
18 cost that can be and should be resolved through the
19 disposition of assets, that, in fact, if their fraud is
20 propelling those costs of administration skyward, if
21 anything, it increases the likelihood that those assets will
22 be necessary, that the stated assets will not be sufficient,
23 and that the concealed assets are now even more at risk.

24 So I'm not sure it resolves the question in a
25 Defendant's favor on intended loss to observe as a factual

1 matter that at a moment in time the debts were considerably
2 lower than the assets, a campaign of fraud begins, which
3 drives up costs chargeable against the assets akin to debt,
4 to say, well, you know, that was all after the fact.

5 I'm not saying you say it lightly or blithely
6 because I think, if anything, that shows a basis to conclude
7 there's even more urgency to conceal the assets because now
8 maybe there was a five percent chance they're at risk.

9 The more I conceal them and the more, you know,
10 sort of somebody that gets into criminal conduct and then
11 keeps on going, that the trustees' costs are accelerating,
12 which are chargeable against the assets, the same as a debt
13 for resolution of an estate, and drives the intent to further
14 conceal the assets, because now rather than being five
15 percent at risk, they're 25 percent at risk, 32 percent at
16 risk, and as we propel forward, the likelihood of them being
17 on the table gets higher; doesn't it?

18 MR. DIETZ: Oh, absolutely. Absolutely. The -- I
19 guess one of the ironies in this case is that Mr. Free's
20 conduct after it was discovered ultimately funded the rest of
21 the administration as well. I mean for what little this was
22 worth, there was no loss to anybody in this bankruptcy, even
23 with respect to the expenses of the administration.
24 Everything is paid.

25 THE COURT: And I believe I've made the tentative

1 finding in the last footnote that it appears that after
2 everything's cashed out, there's still leftovers?

3 MR. DIETZ: And one of the things I would like to
4 point out at this point, too, Your Honor, I mean I realize
5 this is probably more testimony than anything else, but out
6 of that \$640,000 that was raised from the sale of those guns,
7 a substantial part of that money will be returned to
8 Mr. Free, and I only bring that up because it won't be used
9 for anything -- any bankruptcy expenses.

10 THE COURT: It's part of the leftover.

11 MR. DIETZ: Yeah. It's the leftover; and at this
12 juncture, I mean I know that there are at least four
13 attorneys that aren't creditors of the bankruptcy estate that
14 are going to be paid out of that as well. So --

15 THE COURT: And based on the record before the
16 Court, I'm not -- it's not surprising that you would report
17 that, Mr. Dietz.

18 MR. DIETZ: That's all I have, Your Honor.

19 THE COURT: Okay. I appreciate that, Mr. Dietz.
20 And we'll make sure you have a further opportunity to the
21 extent you believe it appropriate, and I sincerely mean that,
22 to say anything else.

23 Mr. Free, sir, I'll now address you personally and
24 directly. This is your opportunity without limitation to
25 tell me anything, absolutely anything at all you want me to

1 know or be aware of relative to you or your case. And the
2 floor is yours, Mr. Free.

3 THE DEFENDANT: Your Honor, you can ask me any
4 questions you would like, and I would be glad to answer them.

5 I do have a few little things to say. You know, my
6 problem is I want to retry the case and argue the case, which
7 is a moot point I guess at this point I guess.

8 But I would like to say, Your Honor, that I
9 recognize that I had made many, many mistakes. And through
10 my past I may not be a very credible person to make the next
11 statement, but I have had plenty of time to reflect on all
12 this. This bankruptcy and stuff has been going on for seven
13 years. That's a long time. So I have reflected on this, and
14 I am truly sorry for my conduct.

15 I never meant -- I swear to God, right hand to
16 God -- I never meant to hurt anybody, to conceal -- to not
17 pay anybody.

18 Judge, the only reason I filed bankruptcy, a lawyer
19 told me -- he said you can save this Monroeville property
20 that I've been paying on for 18 years. And S&T came in, took
21 over Irwin Savings Bank, and they immediately started to
22 foreclose without even asking me a question. Can we
23 refinance this? Can we do anything? No. They just wanted
24 to foreclose on it.

25 So this attorney in Greensburg, Dave Colecchia,

1 told me you can file bankruptcy, and it will stop all that.
2 I was not bankrupt. I could pay my debts and things.

3 I know I've offended this Court and other courts
4 and the U.S. Government. And like I said, my goal in filing
5 bankruptcy and my only goal was to save a piece of property
6 that I had been paying on for 18 years.

7 I have very few creditors. As a matter of fact, I
8 only had one creditor in a store that I owed money -- a
9 manufacturer that I owed money to and so on. It was -- the
10 whole thing was to save the Monroeville property, and that's
11 the only reason I filed bankruptcy on the attorney's advice.

12 I'm not an attorney. I'm not a smart guy. I don't
13 even have a college education. I'm just a hard working guy.

14 I've never taken Social Security -- I mean I've
15 never taken disability, and I'm entitled to it. I've never
16 taken any Welfare or anything. I've worked every day of my
17 life, and I've worked hard. Nobody gave me anything. I
18 didn't inherit anything. I worked hard to get everything
19 that I obtained.

20 And unfortunately, through my actions and things,
21 I've lost almost everything. I've lost my -- I appreciate
22 your comment on the extremely rare firearms and historical
23 firearms, which they were, no doubt about it. They were some
24 of the rarest ones in the world that I was able to obtain.
25 And then I've lost most of my friends.

1 You know, I'm not a well person. I have a lot of
2 security problems. It hurts me to walk into the courtroom.
3 But yet, I come to this proceeding, and I've come to almost
4 every bankruptcy proceeding.

5 All I really wanted to do in to life was collect
6 antique firearms. And I have a business selling firearms, it
7 was a business to buy and sell firearms, which I did. Both
8 of these dreams are gone. However I've run my life and my
9 store, that's gone.

10 I recognize the fact that this has cost in excess
11 of \$1 million, and most of it is my fault. I take full
12 responsibility for my actions. And I'm truly sorry for my
13 actions, which I hope you believe me.

14 And I know I don't have much credibility I guess,
15 but I never, ever -- I said this to Mr. Colecchia the first
16 day I met with him, I said if I owe anybody money, I want to
17 pay them immediately.

18 And after the first sale the creditors were paid.
19 We had enough money to pay the creditors and so on.

20 Mr. Walsh has made over a half a million dollars.
21 Mr. Walsh doesn't want this to end. It's been going on for
22 seven years. This is ludicrous for it to go on this long,
23 and it's still going on.

24 Hopefully we're going to resolve this this year.
25 All of the -- we have enough money. There's going to be some

1 excess money and things.

2 But also, Judge, if I'm incarcerated, I'm going to
3 lose the rest of my holdings, the little bit of property. My
4 own home and stuff will be sheriff's sold. It's a very, very
5 tough situation for me.

6 Instead of being in prison, I would like to be in a
7 hospital getting some of this medical care that I need
8 desperately and things. If I'm in prison, I'm going to have
9 a really tough time. No doubt about it. I'm not saying I
10 don't deserve it. I probably do I guess.

11 But I'm just throwing myself on the mercy of the
12 Court. I'm not a bad guy. I'm not a violent person. I
13 never even raised my voice. I don't have a temper. I just
14 made a number of mistakes, Your Honor, and for that I
15 apologize.

16 I think that's all, Your Honor. But I do take
17 responsibility for my actions. I made a lot of mistakes, no
18 doubt about it.

19 THE COURT: Thank you, Mr. Free.

20 THE DEFENDANT: Mr. Dietz is going to have to tell
21 me to shut up --

22 THE COURT: No. Feel free to talk with Mr. Dietz.

23 (Private conference between Defendant and Mr.
24 Dietz.)

25 THE COURT: Mr. Free?

1 THE DEFENDANT: I think that's all, Your Honor.
2 Thank you very much. If you have any questions, feel free to
3 ask me. I'd be glad to answer them for you.

4 THE COURT: I don't at the moment, Mr. Free, but I
5 appreciate the comments very much.

6 Mr. Dietz, before I turn to Mr. Wilson, is there
7 anything else you'd like to say at the moment? I will make
8 sure you have a further opportunity.

9 MR. DIETZ: No, Your Honor.

10 THE COURT: Thank you, Mr. Dietz. Thank you,
11 Mr. Free.

12 Mr. Wilson, sir? The Court's pleased to hear from
13 you on behalf of the United States of America.

14 MR. WILSON: Thank you, Your Honor. A couple of
15 things. I'll be brief.

16 THE COURT: Take the time you need.

17 MR. WILSON: Mr. Dietz, as he has throughout this
18 proceeding, talks about what we know relative to assets and
19 liabilities.

20 As to the stream of the bankruptcy proceeding, the
21 record before this Court is absolutely empty as to what the
22 Defendant knew at any point in time. We have not a single
23 fact of record beyond the petitions themselves --

24 THE COURT: The first -- the very first --

25 MR. WILSON: -- that's right. As to what the

1 Defendant knew or intended or what was in his mind,
2 particularly with regard to what Mr. Dietz has repeatedly
3 described as the \$70,000 versus the pile of assets. We don't
4 know if that was ever made known to him or not. The record
5 is simply empty in that regard. We know nothing.

6 Contrast that, Your Honor, which requires at least
7 a certain degree of speculation, with what is absolutely
8 known. And by that I mean this.

9 If you look to first the issue of pecuniary loss or
10 pecuniary gain, the record is abundantly clear that the
11 Defendant had an immediate pecuniary gain in the course of
12 the bankruptcy of several hundred thousand dollars from the
13 firearms that the Government documented that he sold during
14 the pendency of the bankruptcy proceeding.

15 That's of the record, and the Court referenced
16 those numbers in its tentative findings and conclusions.
17 There's no speculation about that.

18 THE COURT: Mr. Wilson, if I could ask you a
19 question about the gain -- and I alluded to it in the
20 tentative findings -- I didn't allude to it. I said it.

21 I read Judge Fuentes' opinion in this case, and I
22 read Judge Becker's opinion in Feldman. And each is, in the
23 Court's estimation, unequivocal and clear that in the
24 bankruptcy concealment context, in terms of intended loss,
25 I'm to look at intended pecuniary loss or intended pecuniary

1 gain.

2 What I'm about to say is not meant to be the least
3 bit critical of the Judges on the Court of Appeals. I didn't
4 read either opinion as making a reference to the application
5 notes to 2B1.1, which seemed to indicate that I am to -- as a
6 Judge is to look at the concept of gain in those
7 circumstances where there's a finding of an actual loss,
8 coupled with an inability, due to complexity or other
9 matters, to come to any precise conclusion as to the
10 pecuniary loss.

11 In that case in essence pecuniary gain becomes a
12 proxy. That limitation is not referenced in Feldman or in
13 the Court of Appeals' opinion in this case. What, if
14 anything, does the United States think I should make of that?

15 MR. WILSON: Very little, Your Honor, for this
16 reason. I think the Court has alternative hooks on which you
17 can hang your robe relative to your decision in these
18 matters.

19 Pecuniary gain is explicit. It's in the record.
20 The Court referenced it in the tentative findings in terms of
21 the repurchase of estate assets, and, as it were, a kind of
22 churning going on within the bankruptcy process, which the
23 Defendant clearly knew was impermissible.

24 The Court -- this Court may recall that the
25 Bankruptcy Court asked him repeatedly where did you get this

1 money?

2 THE COURT: Friends and relatives.

3 MR. WILSON: And he lied to the Judge repeatedly;
4 multiple inquiries by the Court. So that in terms of record
5 findings for purposes of gain, there's no speculation at all.
6 There's at least the several hundred thousand dollar figure
7 that the Government cited to the Court previously and that
8 the Court has included in its tentative findings and
9 conclusions.

10 As to the pecuniary loss, I don't want to rehearse
11 all the arguments and discussions that we've had, but I'll
12 reference the Court to your own findings, again, at page 3.

13 But to me, Your Honor, you dispose of the issue in
14 a concise and straightforward way when you say "the credible
15 evidence in the record is that the Defendant knew at the time
16 of his repeated concealment of those assets and his
17 diversionary tactics regarding them that he would go to and
18 intended to go to any necessary length to protect his
19 concealed assets from any possibility of trustee
20 liquidation."

21 Your Honor, Feldman didn't change the law. Loss
22 was either actual loss or intended loss.

23 The Court and Mr. Dietz just a few moments ago had
24 a discussion about the administrative costs and, well, what
25 could we have speculated about regarding whether or not these

1 other assets might actually have been needed to handle
2 administrative costs or creditors that might appear later on
3 in the process that were not contemplated when Mr. Dietz was
4 talking about the \$70,000 and the pile of assets?

5 Your Honor, you don't need to speculate on that
6 either. Here it became a situation where Trustee Walsh had
7 to have an auction of firearms to acquire more cash to handle
8 administrative costs and so forth. So the very scenario
9 which the Court posits in some regard as hypothetical took
10 place here. That happened.

11 Trustee Walsh had to liquidate assets way beyond
12 what were necessary apparently to satisfy creditor requests
13 or requirements. So there's no speculation there either.
14 That took place.

15 I respectfully suggest, however, Your Honor, that
16 with regard both to pecuniary gain and pecuniary loss, those
17 issues, while real and tangible and ascertainable for
18 purposes of the Court's findings, in the very clear and
19 concise manner in which you set them forth, should be
20 secondary to what I think is the principal offense here, and
21 that is this Defendant's ungarnished and unrelenting
22 mendacity to both the Bankruptcy Court and this Court, to
23 Trustee Walsh and to his creditors.

24 That at all times when given the opportunity by the
25 judicial process to step forward and say, yes, there are

1 additional assets, when the deputy sheriffs from Westmoreland
2 County are there, there are 50-some more guns in a room in
3 the house he could have taken them to.

4 Nope. You're not going to get them if you don't
5 find them. That's the attitude and perspective Mr. Free
6 brought to this entire process.

7 And I appreciate the fact that today he talks to
8 the Court in terms of his good faith and his mistakes. I'm
9 always a little leery of the use of the word mistakes to
10 cover deliberate and purposeful conduct.

11 But I understand what Mr. Free is saying. It's
12 just that -- and perhaps it's simply because I've been an
13 officer of the Court for too long -- when you are told by a
14 Bankruptcy Court Judge to give the Court an inventory and an
15 accounting of any assets of the estate that you've sold, and
16 you come in under oath and say I don't need to give you an
17 accounting because no assets have been sold, and that day and
18 the day thereafter you're depositing checks from guns that
19 you've sold over the Internet, I find that to be an enormous
20 affront to the Court, one that is sufficient in and of itself
21 in the manner that I addressed in the memorandum that I gave
22 to the Court.

23 And I believe that the Circuit indicated repeatedly
24 in its most recent opinion, I think Judge Fuentes invited
25 this Court to make a finding relative to the Defendant's

1 nonmonetary conduct as a sufficient basis in and of itself
2 for a very substantial sentence.

3 That, Your Honor, is the grievance against the
4 process that the Government asks the Court to address in
5 whatever sentence the Court fashions as the appropriate
6 sentence in this case.

7 THE COURT: Thank you very much, Mr. Wilson.
8 Mr. Wilson, if I could ask you a couple of questions, and I
9 may be asking similar questions to Mr. Dietz.

10 At the time of the first sentencing in this case,
11 the Court did not include in its judgment of sentence the
12 imposition of a fine. Under the guidelines, as I understand
13 them, under either of the guideline manuals, the Court is
14 directed to impose a fine unless, among other things, the
15 Court concludes that a Defendant is not in a position to pay
16 a fine.

17 I believe what I articulated on the record at the
18 first sentencing was that I would not impose a fine, as I
19 believed there was a meaningful risk that the imposition of a
20 fine would require the liquidation of assets, which may have
21 been contrary to the interests of the administration of the
22 bankruptcy estate, the interests of creditors, costs of
23 administration. So the judgment of sentence at the original
24 sentencing in this case did not include an imposition of a
25 fine.

1 I've not requested any updated information in terms
2 of the financial provisions of the presentence report. Is
3 there anything you can put on the record or advise the Court
4 of regarding that issue?

5 MR. WILSON: Only two very brief observations, Your
6 Honor. One is it has been more or less the posture of the
7 defense throughout the trial and continuing up to today that
8 Mr. Free has plenty of assets to handle all the matters
9 relative to the bankruptcy estate with plenty left over.

10 So in terms of a fine in that sense, I don't
11 dispute what the defense has consistently represented.

12 Secondly, as the Court is well aware, there are
13 still many, many firearms in the possession of the FBI. And
14 certainly a portion of those could be liquidated to satisfy
15 any fine that the Court might impose.

16 And I don't know the mechanism, but I know -- I
17 have raised the subject very briefly with Trustee Walsh, and
18 Trustee Walsh has indicated to me that can happen with the
19 appropriate Court Order, that assets of the estate can be
20 liquidated to satisfy a criminal fine under Title 18.

21 I would also note, Your Honor, the Defendant's
22 remark that Mr. Walsh doesn't want this case to end is very
23 much contrary to my interaction with Mr. Walsh, who assures
24 me repeatedly and consistently that there's nothing more that
25 he would like than for this case to end.

1 THE COURT: Thank you, Mr. Wilson.

2 Mr. Dietz, sir, is there anything that you'd like
3 -- and I don't mean to suggest the answer should be no. It's
4 a sincere question. Is there anything else at all that you'd
5 like to bring to the Court's attention or present?

6 MR. DIETZ: Just briefly --

7 THE COURT: Take the time you need.

8 MR. DIETZ: One thing I would like to point out is
9 that when Mr. Free did sell guns that were not disclosed to
10 the bankruptcy trustee, one interesting fact is the proceeds
11 from the sale went back into the bankruptcy estate.

12 THE COURT: Well, they weren't a donation.

13 MR. DIETZ: But my point is this. They did go --
14 instead of taking the money and hiding with it, he did at
15 least infuse it into the bankruptcy estate for the trustee to
16 use to pay off other debts. He did get assets for it.

17 THE COURT: The net worth of the estate didn't
18 change. It was money in, property out. I agree that the
19 cash column on the estate's balance sheet would have
20 increased by the amount of cash, that some noncash tangible
21 asset came out. He went shopping at the estate rather than
22 at Macy's.

23 MR. DIETZ: That's right. And -- I mean if he
24 would have went to Macy's, I think that might even have been
25 a little more egregious.

1 But secondly, Judge, with respect to a fine, I
2 don't think the circumstances have changed. His -- at the
3 risk of -- I don't want to offend my client, but his house
4 has even been described by agents as it's not in very good
5 shape. His commercial property is dilapidated and run down.
6 He's not operating out of there.

7 He has used cars. I know that. The guns are
8 there. No one knows what the value of those guns are. They
9 are the less valuable of the guns that were in his
10 collection. So from our perspective, nothing's changed in
11 his financial condition since the date of the last
12 sentencing.

13 THE COURT: I appreciate that, Mr. Dietz. Mr.
14 Dietz, I'll ask you this, and then I'll ask Mr. Wilson. Is
15 there any representation that you can comfortably make on the
16 record as to the status of the closure of the bankruptcy
17 estate?

18 MR. DIETZ: Judge, I'm one of those lawyers that
19 has a claim on the surplus. So nobody wants it to be
20 resolved quicker than I do, and I'm on his bankruptcy lawyer
21 all the time for the status.

22 The only thing that is holding the bankruptcy
23 estate up now is when they sold these ten firearms, tax
24 returns needed to be filed. Some of these firearms are so
25 old, Mr. Free bought them so long ago that he didn't have

1 documentation as to what the purchase price was --

2 THE COURT: The basis.

3 MR. DIETZ: The basis, right. They've been
4 negotiating with the IRS and the Commonwealth of
5 Pennsylvania. The IRS right around Christmastime issued a
6 letter saying we're going to accept the tax return as filed.

7 The only outstanding issue is they're negotiating
8 with the Commonwealth of Pennsylvania right now. I can tell
9 you as of about two weeks ago a Court Order was filed.
10 They're hoping to have this resolved in March.

11 THE COURT: Okay. That's helpful, Mr. Dietz. I
12 appreciate that.

13 MR. DIETZ: So --

14 THE COURT: That's helpful. Very helpful. I
15 appreciate that.

16 Mr. Wilson, anything you can add on that point or
17 anything else you would like to bring to the Court's
18 attention?

19 MR. WILSON: Nothing. Thank you, Your Honor.

20 THE COURT: Okay. I note that it's about five
21 minutes after three. I would like to take a brief recess.
22 Let's plan on resuming at approximately 3:15.

23 Mr. Babik, if you'd recess the Court until
24 approximately 3:15.

25 MR. BABIK: All rise.

1 (A recess was taken at 3:05 p.m.)

2 (3:24 p.m., in open court:)

3 THE COURT: Please be seated, everyone. We're back
4 on the record. The Defendant, Mr. Free, is present
5 represented by counsel. Mr. Wilson is present on behalf of
6 the United States of America.

7 Mr. Dietz, sir, is there anything further you'd
8 like to bring to the Court's attention?

9 MR. DIETZ: No, Your Honor.

10 THE COURT: Thank you, Mr. Dietz. Mr. Wilson, same
11 question of you, sir?

12 MR. WILSON: Nothing. Thank you, Your Honor.

13 THE COURT: Thank you, too, Mr. Wilson. Just to
14 confirm for the record, these matters are set forth in the
15 Court's tentative findings, which the Court adopts as
16 corrected earlier in today's hearing.

17 There are six counts of conviction in this case.
18 They are grouped pursuant to the applicable grouping
19 provisions of the advisory guidelines.

20 The Court finds that the base offense level is 6,
21 that there are two adjustments, one for the conduct occurring
22 in the course of a bankruptcy proceeding, which is an upward
23 adjustment of two levels, and then an upward adjustment
24 totaling 14 levels based on the intended loss amount in this
25 case; or alternatively, separately and distinctly based on

1 the direction of the Court of Appeals in both its decision in
2 this case and in the Feldman case that I'm to separately and
3 distinctly consider the intended gain to the Defendant, I
4 find that they fall within the same range for purposes of the
5 2014 guidelines manual in an amount greater than \$400,000 but
6 not in excess of one million dollars.

7 For the reasons that I've stated in the tentative
8 findings, I believe there is without any doubt that the
9 intended -- that the pecuniary value of the intended loss to
10 the bankruptcy estate and creditors fell within the range
11 that I've just stated, and the intended pecuniary gain to the
12 Defendant also and likewise fell within that range.

13 If the loss table from the 2016 Guideline Manual
14 were applicable, there would be in the Court's estimation the
15 same upward adjustment because it would be in an amount in
16 excess of \$550,000 but not exceeding \$1,500,000.

17 I make those specific findings for all of the
18 reasons that are set forth in the tentative findings.

19 In addition, I would note, as I noted in a footnote
20 note to the tentative findings, to the extent as a matter of
21 logic, and there is to a degree some language in the Feldman
22 opinion that could be read as capping the intended loss, not
23 the intended gain, but the intended loss at the amount of the
24 debt, the Court would note based on the credible evidence
25 that's in the record before the Court, that both the amount

1 of the debt at its highest and with the requisite evidentiary
2 standard, the amount of debt plus administrative expenses,
3 the Court finds by at least a preponderance of the evidence
4 in either case falls within that same range.

5 So for those reasons, the reasons stated in the
6 tentative findings and the specific findings I've already
7 made and am going to amplify on the record, I find that that
8 loss table adjustment is the appropriate one.

9 That yields a total offense level of 22.
10 Mr. Free's reported criminal history places him at criminal
11 history category 1. It places the matter in Zone D of the
12 sentencing table.

13 The applicable advisory guidelines provide for a
14 recommended or advised range of imprisonment of 41 to 51
15 months. Probation is authorized by statute of a term of at
16 least one year and not greater than five years, and each of
17 these are per count of conviction.

18 Probation is not recommended under the advisory
19 guidelines. The Court is authorized to impose a term of
20 supervised release of not more than three years.

21 The maximum statutory fine is \$250,000 per count of
22 conviction. The advisory guidelines advise a fine in the
23 range of \$7,500 to \$75,000.

24 Restitution and forfeiture, as those terms are used
25 for sentencing purposes, appear not to be applicable in this

1 case. Do you agree, Mr. Wilson?

2 MR. WILSON: I do, Your Honor.

3 THE COURT: Do you agree, Mr. Dietz?

4 MR. DIETZ: Yes, Your Honor.

5 THE COURT: And there is a special assessment of
6 \$100 per count of conviction for a total of \$600 in this
7 case.

8 The Court makes -- or amplifies the findings as
9 already made in the record as follows: I find that Mr. Free,
10 the Defendant in this case, intended to inflict pecuniary
11 harm on the bankruptcy estate and ultimately the creditors by
12 any means that he could take, as evidenced by his conduct in
13 this case regarding the concealment of assets and his false
14 statements as found in this case.

15 I base that conclusion principally on the lack of
16 any evidence to the contrary, but beyond that, and perhaps
17 more singularly, the volume of the assets that were
18 concealed, the persistency of the efforts to conceal those
19 assets and to deceive the Bankruptcy Court and the trustee
20 even after clear, unequivocal and direct admonitions from the
21 bankruptcy trustee and the Bankruptcy Court.

22 The Court would also note, given the multiplication
23 of the costs of the bankruptcy administration, which were
24 accelerated principally, if not exclusively, by Mr. Free's
25 conduct in this case, be a natural and probable consequence

1 of the concealment, was an ever-increasing risk of harm to
2 the bankruptcy estate and to the creditors.

3 Irrespective of the ultimate reconciliation of the
4 books, if you will, nobody in Mr. Free's shoes should have
5 had any confidence or taken any comfort that the concealment
6 of the assets and his disposition of concealed assets in
7 exchange for currency would not have an impact on the
8 creditors and on the bankrupt estate.

9 No matter what the original differential was
10 between the assets and the debts or what counsel for Mr. Free
11 has reported, and I'm not doubting what counsel said, might
12 have been an intermediate variation and differential with
13 assets exceeding the debts, the bankruptcy expenses, the
14 administration of the bankruptcy estate, also would have been
15 a call against the assets of the estate properly payable from
16 them.

17 And particularly in light of the fact that
18 Mr. Free's conduct involving his persistent concealment of
19 the assets, conversion of the assets for his own benefit, and
20 similar conduct multiplied the administration and the
21 necessary expenses of administration, to the degree
22 Mr. Free's sentencing argument is based in whole or in part
23 on a degree of illogic that he could have ever intended there
24 to be a pecuniary harm, I find and conclude almost to the
25 opposite.

1 Given that Mr. Free's conduct was as persistent and
2 pervasive and consistent as it was, it demonstrated a clear
3 and profound intention to do whatever it took to make sure
4 the assets he held most dear were never exposed to the risk
5 of liquidation and that, as the bankruptcy continued, the
6 risk that they could be exposed to such liquidation, in fact,
7 increased on this record at the same time Mr. Free's efforts
8 in those regards were accelerated.

9 So for those reasons, which are consistent with the
10 decision of the Court of Appeals in Feldman, the direction of
11 the application notes to the relevant provisions of the
12 sentencing guidelines manual, I find and specifically
13 conclude that Mr. Free intended to inflict pecuniary harm on
14 the bankruptcy estate and, through the estate, the creditors
15 and anybody else that would have had a call on his assets
16 through that and out of that process in the range that I've
17 specifically found for the upward adjustment of 14 levels.

18 Separately and distinctly, consistent with the
19 opinion of the Court of Appeals in this case and what this
20 Court believes the Court held in Feldman, I believe that
21 there is evidence, not only by a preponderance of the
22 evidence, but by at least clear and convincing evidence, that
23 it was Mr. Free's intention to generate a direct pecuniary
24 gain to himself from the concealment of the assets and his
25 conduct in the administration of the bankruptcy estate with

1 his false statements to the trustee and to the Bankruptcy
2 Court.

3 First, there's considerable record evidence of an
4 actual, direct pecuniary gain to Mr. Free from his conduct.
5 He concealed portions of -- considerable portions of his
6 historic firearm collection, and then after being directly
7 told by the trustee that under no circumstances should he
8 sell or convert any of those assets, he did exactly that. It
9 generated a considerable amount of cash, and that generated
10 an actual gain in currency.

11 However, beyond that, what the record has made
12 crystal clear to the Court in this case, it is the historic
13 nature of the firearms that were part and parcel of
14 Mr. Free's collection, which was plainly near and dear to
15 him, which was of considerable, considerable direct economic
16 value.

17 And the concealment, for instance, of the
18 considerable cache of firearms from the Westmoreland County
19 Sheriffs in a separate room within Mr. Free's house was a
20 direct effort to get, and, until it was discovered, actually
21 achieve a direct pecuniary gain by diverting from the control
22 of the bankruptcy trustee for the benefit of the estate items
23 of considerable and substantial monetary and pecuniary value.

24 They're substantial. They're significant as
25 demonstrated by the auction of ten of the most valuable of

1 firearms here.

2 Mr. Free had a direct, actual pecuniary gain
3 resulting not only from the currency that he received from
4 the post-admonition sales, but by his retention until the
5 eleventh hour and their discovery of a considerable historic
6 firearm collection, of the valuation based on the record
7 evidence of this case, that places it at least squarely
8 within the range that I've noted.

9 In addition, it appears from the record, and the
10 Court finds by at least a preponderance of the evidence, that
11 Mr. Free intended to and, in fact, achieved an actual
12 pecuniary gain by using money from the sales of some of those
13 firearms, which were directly contrary to the directions of
14 the bankruptcy trustee, to then gain to himself out of the
15 bankruptcy estate assets that otherwise would have been under
16 the control of the trustee, by using the money from the sale
17 of things he wasn't allowed to sell in order to buy things
18 from the estate itself that obviously were of importance to
19 him.

20 He in essence used purloined money. It was money
21 that was under the control and dominion under the law and
22 factually of the bankruptcy trustee in order to gain for
23 himself things of actual pecuniary value, namely the items
24 that he purchased.

25 So separately and distinctly under Feldman and in

1 the Court of Appeals' decision in this case, beyond the
2 intent to inflict pecuniary harm I've noted above, I find by
3 clear and convincing evidence that he intended to have a
4 direct pecuniary actual gain to himself, and to a degree he
5 achieved that gain.

6 All in, the Court concludes with a high degree of
7 certainty, certainly to a preponderance of the evidence
8 level, but as to the gain by clear and convincing evidence,
9 that the loss amount of in excess of \$400,000 up to and
10 including \$1 million is at least the appropriate loss
11 calculation figure in this case.

12 Further, I would note to the extent as a matter of
13 logic if, under the Feldman opinion, there is in essence a
14 stop loss at the amount of the debts and expenses of
15 administration, it would appear that that amount falls within
16 that range also.

17 So the Court believes that that finding does not
18 only generate and is virtually compelled by the record here,
19 but falls within whatever constraints may exist on an upper
20 limit to that amount under at least one reading of the
21 Feldman opinion.

22 Mr. Free, I make the following additional findings
23 in this case. I really wish there was another way to say
24 this, Mr. Free, and be accurate. But in thinking about the
25 case, I can't come up with one.

1 You received a fair, clear, plain English warning
2 from the bankruptcy trustee in this case and then ultimately
3 the bankruptcy Judge as to what you were and weren't allowed
4 to do. By any measure it was clear beyond all doubt.

5 You then engaged in a course of conduct that was
6 marked by your blatant deception and your disregard for those
7 directions. You violated the Court Orders.

8 As I've noted in the Court's tentative findings, I
9 independently conclude that there would be a basis for a
10 further upward sentencing departure under the law and under
11 the sentencing notes. I'm not applying that departure in
12 your case. I'm considering it as part of the overall
13 sentencing factors.

14 You engaged in persistent efforts to evade your
15 obligations, which were made known to you clearly. You
16 engaged in concealment and deception after you received fair
17 warning.

18 Coupled with the volume of the concealment, there's
19 a strong and the Court draws the inference of your intent to
20 inflict and cause harm to the bankruptcy estate and
21 creditors, and you well and truly knew, as any reasonable
22 person would, of the natural and probable consequences of
23 your conduct, and plainly you intended to engage in a
24 direct -- to achieve a direct pecuniary gain from your
25 conduct.

1 So I specifically make those findings for the
2 reasons I've stated on the record.

3 Mr. Free, in setting your sentence and any sentence
4 in Federal court, the Sentencing Reform Act, which is a
5 statute passed by Congress and signed into law by the
6 President, says that I'm to consider all of the information
7 that properly comes before the Court, and I've done so.

8 I'm to consider the nature and circumstances of the
9 offenses of conviction, as set forth in the records before
10 the Court.

11 I'm to consider your history and characteristics as
12 set forth in the presentence report and the addendum. This
13 includes your family and personal history and data, physical
14 condition, mental and emotional health, educational and
15 vocational skills along with your employment record.

16 Ultimately, Mr. Free, in your case and in every
17 other that appears in this court, it's the obligation of the
18 Court to set a sentence that is sufficient but not greater
19 than necessary to comply with the purposes of sentencing.
20 I'll now state how each applies in this case.

21 The first is to reflect the seriousness of the
22 offenses of conviction. For the reasons I've stated,
23 Mr. Free, and some I'm going to state, your conduct was of a
24 high level of seriousness. It was intended to cause harm.
25 It was intended to and in actuality for a period of time

1 achieve a gain for you.

2 It's to your credit, and it's the nature and
3 circumstances of the offense, as the Court's noted in the
4 tentative findings, it does not involve physical violence or
5 threats of physical violence to others.

6 What your conduct did do, however, is do violence
7 to the system of justice that we have in the United States.
8 People are expected to come into court and tell the truth.
9 People interacting with the Government are expected to tell
10 the truth. You can't be compelled to talk. But if you do
11 speak, you have to tell the truth. And why is that?

12 We have almost 325 million people that live in this
13 country. We're a big, vibrant, bursting society and economy.
14 We rely every day on people telling the truth. When it comes
15 to the legal system, that's all we have to go on.

16 As I indicated at the first sentencing, we in
17 essence don't have a cavalry that rides around and verifies
18 what people tell Judges or bankruptcy trustees or judicial
19 officers. We have to rely on the truth. Otherwise, the
20 system breaks down. We can't operate.

21 And the hallmark of our republic is the rule of
22 law. And the rule of law turns on the truth.

23 So it's to your credit that it's not an offense
24 that involves physical violence or threats of physical
25 violence, but it does do violence to the glue that holds much

1 of our society and our legal system together.

2 The second purpose of sentencing, Mr. Free, is to
3 promote respect for the law. This one in the Court's
4 estimation cuts both ways in your case.

5 You come to Federal court as someone who's of some
6 years. Hopefully you have a lot of them left, but you're not
7 a young, young person. You don't have a criminal record of
8 any consequence to the Court.

9 You had one thing that happened when you were a
10 teenager that, based on the Court's reading of the record,
11 sounded like kind of a dumb thing that kids do. It didn't
12 cause harm or violence of any consequence. But you come to
13 the Court with a clean record.

14 You were a licensed federal firearms dealer for a
15 number of years. That's not an easy status to obtain or to
16 keep. It required you to abide by the law. And all of that
17 is to your credit, Mr. Free. And I don't mean to downplay it
18 by stating it that way. It is to your credit.

19 On the flip side of the same coin is your counts of
20 conviction have at their core failure to respect the legal
21 system, to respect the law, to respect the authority of the
22 Bankruptcy Court and the trustee. So that's a big deal, but
23 it does, as I've noted, for reasons stated, cut in your
24 direction to a degree.

25 Any sentence is to provide just and sound

1 punishment for the offenses. The Court believes the sentence
2 as imposed will do that.

3 The fourth purpose of sentencing is to adequately
4 deter you and others in society from engaging in similar or
5 other criminal conduct.

6 Mr. Free, I think that to a large measure we can
7 all hope and, therefore, believe that past is prologue. The
8 fact that no matter how dramatic this episode was, the rest
9 of your life was law abiding, that whatever you believed
10 would be the outcome when you began this bankruptcy process,
11 I would like to believe that you never envisioned yourself
12 sitting in the chair you're sitting in today.

13 I would also like to believe that you're not a risk
14 of engaging in similar conduct in the future, at least not
15 much of one.

16 It's always a bit of an open question I believe to
17 any Judge to have any sense of the degree to which a sentence
18 in a particular case deters others from being tempted to
19 engage in the same conduct.

20 In your case, because it goes to the system of
21 justice we have, I do believe that part of the sentencing in
22 your case, maybe more than in many other cases, does relate
23 to the necessity to deter others from being tempted to engage
24 in the same conduct for the reasons that I've stated.

25 I'm to consider the now advisory sentencing

1 guidelines and the applicable policy statements and
2 sentencing factors.

3 Mr. Free, I've concluded that the advisory
4 guideline sentence in this case, which is 41 to 51 months in
5 prison, would result in a sentence that is greater than
6 necessary to fulfill the purposes of sentencing in your case,
7 particularly in light of your personal history.

8 I am not saying it's not the correct application or
9 calculation of the advisory guidelines. But I believe all of
10 the purposes of sentencing in this case can be met and
11 fulfilled with a sentence that is not at the level
12 recommended by the now-advisory guidelines.

13 I'm to consider the types and kinds of sentences
14 that are available, as I've indicated, by statute. Both
15 incarceration and probation are available to the Court.

16 I conclude that if I don't include a period of
17 custody with the United States Bureau of Prisons, I would
18 fail as the Judge to set a sentence that fulfills the
19 purposes of sentencing. So from the Court's estimation, a
20 probationary or non-custody sentence would fail to fulfill
21 those purposes.

22 The next purpose of sentencing is to protect the
23 public from the commission of further crimes by you. I've
24 indicated at least what the Court's hopes are in regard to
25 your conduct down the line.

1 While not a direct purpose of the sentence, I am to
2 consider the need for any educational and vocational
3 training, medical care or other correctional treatment in the
4 most effective manner.

5 I will make a specific recommendation to the United
6 States Bureau of Prisons that you be placed at a facility
7 that provides the requisite level of medical care to be able
8 to address the afflictions to which you've noted, which were
9 reflected in the presentence report.

10 I'm to avoid in any sentence any undue or unjust
11 disparities in the sentence imposed in your case or in the
12 case of others who engage in similar conduct.

13 Mr. Free, it's the Court's fundamental obligation
14 to provide for a sentence that is sufficient but not greater
15 than necessary, which means the Court will set a sentence
16 that in the Court's judgment fulfills the purposes of
17 sentencing as described, but then goes no further.

18 Any sentence imposed must relate specifically to
19 you and to your situation and conduct.

20 The Court incorporates all the findings it's
21 previously made on the record. The Court appreciates your
22 statements in open court today, Mr. Free. I take them as
23 being sincere. I take them as being direct.

24 I also would be less than candid with you if I also
25 didn't believe they reflected to a degree the fact that to

1 this very day I'm not sure you understand the seriousness or
2 the consequences of the conduct you engaged in, particularly
3 the idea that the bankruptcy trustee here, the implication of
4 it, that somehow there was an effort to expand or to prolong
5 this case.

6 I think the uncontradicted evidentiary record here,
7 Mr. Free, is it was your conduct that caused this case to
8 take on the size, the magnitude, the length, the complexity
9 that we have before us. Otherwise, it would have been a
10 relatively rapidly administered bankrupt estate.

11 Based on all the matters before the Court,
12 Mr. Free, the Court finds and concludes that the following
13 sentence is appropriate as being sufficient but not greater
14 than necessary to fulfill the purposes of sentencing as I've
15 set forth and under the applicable law.

16 The sentence of the Court is concurrent as to each
17 count of conviction. That means the sentence runs at the
18 same time rather than one after the other. I find that that
19 is consistent with the Sentencing Reform Act and with the
20 sentencing guidelines.

21 Mr. Free, it is the sentence of the Court that you
22 be sentenced as follows: Concurrent as to each of Counts 1
23 through 6 of conviction in this case, that you be remanded to
24 the custody of the United States Bureau of Prisons for a term
25 of custody and imprisonment of 24 months.

1 The Court will impose a fine because the Court
2 finds that an imposition of fine does not pose a risk to the
3 administration of the bankruptcy estate, to the payment of
4 legitimate claims against the bankruptcy estate or to the
5 creditors. The Court will impose a fine in the amount of
6 \$35,000.

7 Restitution and forfeiture are not applicable in
8 your case. There is a mandatory special assessment totaling
9 \$600.

10 You will be placed on a term of supervised release,
11 Mr. Free, of three years to run concurrently at each count.
12 That supervised release will come with a number of
13 conditions, rules and regulations that I'm going to go over
14 in a moment.

15 You'll be obligated while on supervised release to
16 follow each of those rules, regulations and conditions.
17 Should you not do so, that is, if you violate any of them,
18 that could be brought to the Court's attention.

19 The Court could be asked to revoke your supervised
20 release. If your supervised release were revoked, you could
21 be sent back to Federal prison, and you would not receive any
22 credit for time you had already served on supervised release.
23 So it is essential, sir, that you abide by each of the
24 conditions of supervised release.

25 Within 72 hours after your release from custody of

1 the Bureau of Prisons, you're to report in person to the
2 probation office in the district to which you're released.

3 While on supervised release, you're going to have
4 to comply with all of the standard conditions of supervision
5 recommended by the Sentencing Commission or adopted by the
6 Court.

7 In addition, you cannot commit any Federal, State
8 or local crime. You cannot illegally possess any controlled
9 substance. You cannot possess any firearm, ammunition,
10 destructive device or dangerous weapon.

11 You have to provide the probation officers with
12 access to any requested financial records or information and
13 cooperate in the collection of DNA as directed.

14 I will waive, that is, not apply the periodic drug
15 testing requirement mandated by the Violent Crime Control and
16 Law Enforcement Act. Your offense here is not drug related,
17 and you have no current or past history of substance abuse
18 that's relevant to the Court in sentencing.

19 I will require that you comply as a condition of
20 supervised release with all directions and orders of the
21 United States Bankruptcy Court for the Western District of
22 Pennsylvania or any other Bankruptcy Court or District Court
23 in which you have proceedings related in any way to your
24 bankruptcy, along with all directions and orders of the
25 trustee that may be appointed or who has responsibility for

1 any of those proceedings.

2 I am going to impose, given the nature of the
3 bankruptcy assets which were concealed here and the fact that
4 as a result of your felony conviction and as a condition of
5 supervised release, that you cannot possess any firearms,
6 ammunitions, destructive devices or other dangerous weapons.

7 I'm going to impose as a condition of supervised
8 release based on the specific facts, circumstances and nature
9 of the offense of conviction and of the assets involved here
10 a search condition. You will be required to submit your
11 person, property, house, residence, vehicle, papers, business
12 or place of employment to a search conducted by the probation
13 office at any reasonable time in any reasonable manner based
14 on a reasonable suspicion of the presence of contraband or
15 other evidence of a violation of a condition of supervision.

16 Your failure to submit to such a search could in
17 and of itself be grounds for revocation. You have to tell
18 other people who could be located at those locations that the
19 locations may be subject to searches pursuant to that
20 condition.

21 Mr. Free, I find that the sentence as imposed
22 fulfills the purposes of sentencing under the 3553(a)
23 factors, that it is sufficient but also not greater than
24 necessary to fulfill those purposes of sentencing.

25 I find that in the specific circumstances of the

1 case, principally the circumstances of you as an individual,
2 Mr. Free, as opposed to the seriousness of the offense, but a
3 sentence within the advisory guidelines is not necessary to
4 fulfill the purposes of sentencing. I believe the deterrence
5 effects of the sentence will be fulfilled both as to you and
6 by others in society by a sentence of 24 months in Federal
7 prison with all of the other penalties and conditions which
8 have been applied.

9 Mr. Lowers, is there anything regarding the Court's
10 oral pronouncement of sentence that you believe needs
11 corrected, clarified or amended?

12 MR. LOWERS: No, Your Honor.

13 THE COURT: Thank you, Mr. Lowers.

14 Mr. Wilson, on behalf of the United States, I'll
15 ask you the same question. Is there anything regarding the
16 Court's oral pronouncement of sentence that you believe needs
17 to be clarified, amended or corrected? And secondly, does
18 the United States have any objection to the procedural
19 reasonableness of the sentence as imposed?

20 MR. WILSON: I have no objections, Your Honor, and
21 I don't believe there's anything that needs to be further
22 clarified.

23 THE COURT: Thank you, Mr. Wilson. Mr. Dietz, sir,
24 the same two questions for you on behalf of Mr. Free?

25 MR. DIETZ: My only comment, Your Honor, would be

1 that subject to any objections that I made on the record, we
2 have no further objections.

3 THE COURT: Okay. I appreciate that, Mr. Dietz.

4 Mr. Free, you have the right to appeal from all of
5 the orders of this Court, the judgment of guilt that's been
6 entered, the sentence that's been imposed by the Court.

7 Mr. Free, you have the right to be represented by a
8 lawyer in any appeal. If you cannot afford a lawyer for an
9 appeal, one would be appointed for you at no cost to you. Do
10 you understand that, sir?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Mr. Free, if you can't afford to pay
13 the filing fees for an appeal, the Court will forgive you or
14 waive a payment of those filing fees. Do you understand
15 that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Mr. Free, if you can't afford certified
18 copies of any necessary court records for an appeal, they'll
19 be furnished to you at no expense to you and instead at the
20 expense of the Federal Government. Do you understand that?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Mr. Free, I advise you if you do want
23 to appeal, you must do that, that is, appeal within 14 days
24 of today. If you do not appeal within 14 days of today, you
25 would lose any rights to an appeal that you have. Do you

1 understand that, sir?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Okay. And lastly, Mr. Free, I advise
4 you if you would request it, the Clerk of our Court here in
5 Pittsburgh would prepare and file a notice of appeal on your
6 behalf. Do you understand that, sir?

7 THE DEFENDANT: Yeah. I would like to request
8 that.

9 THE COURT: Okay. So you're asking on the record
10 that the Clerk of our Court here in Pittsburgh prepare and
11 file a notice of appeal on your behalf?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Okay. Mr. Babik, I direct that you do
14 that.

15 Mr. Free, I will advise you that ordinarily there
16 is a fee to file a notice of appeal. I believe that that fee
17 totals \$505. As I've stated earlier, if you can't afford to
18 pay the necessary filing fees for an appeal, they'll be
19 waived. They'll be forgiven.

20 For that to happen, you have to file an appropriate
21 financial affidavit with the Court that reflects that you're
22 not in a position to pay that. So we will take and note your
23 request that an appeal be filed. I will direct our Clerk
24 file the notice of appeal.

25 If you believe you cannot pay the filing fees for

1 that appeal, you're going to have to prepare and put on the
2 record the affidavit and declaration that confirms why you
3 can't pay those fees. But that's separate. We're going to
4 take your direction that you want an appeal to be filed, and
5 we'll take that up.

6 Mr. Dietz, is there anything you want to say in
7 those regards?

8 MR. DIETZ: No, Your Honor.

9 THE COURT: Okay. So Mr. Babik, I direct that you
10 file a notice of appeal on Mr. Free's behalf.

11 Mr. Dietz, sir, is there anything else that you
12 would like to bring to the Court's attention or that you
13 believe we need to take up today?

14 MR. DIETZ: Your Honor, the only thing that I would
15 ask is that Mr. Free's bond be continued pending designation.

16 THE COURT: On all of the existing conditions of
17 release?

18 MR. DIETZ: Correct, Your Honor.

19 THE COURT: Okay. Anything else besides that?

20 MR. DIETZ: No, Your Honor.

21 THE COURT: Okay. We'll come back to that in a
22 minute.

23 Mr. Wilson, sir, is there anything else the United
24 States believes the Court should take up today in addition to
25 stating whatever position you have relative to Mr. Dietz's

1 request?

2 MR. WILSON: Nothing else, Your Honor, to bring to
3 the Court's attention.

4 THE COURT: Okay. Does the United States have a
5 position regarding allowing Mr. Free to self-report as
6 designated by the United States Bureau of Prisons?

7 MR. WILSON: I have no objection to self-reporting,
8 Your Honor.

9 THE COURT: Okay. I --

10 MR. WILSON: I do have -- should the matter arise,
11 the Government would object to bond pending appeal, but --

12 THE COURT: If that comes up.

13 MR. WILSON: Yes.

14 THE COURT: Okay. And certainly you reserve the
15 rights of the United States in that regard, as does Mr.
16 Dietz, should that circumstance arise.

17 Mr. Dietz, do you have any reason to believe that
18 Mr. Free has not been in full compliance with his terms and
19 conditions of release?

20 MR. DIETZ: No, Judge. I believe he has. He's
21 remained in this area. He's known this day's been coming for
22 a while, and I see no reason why --

23 THE COURT: Mr. Wilson, has information come to
24 your attention that would indicate that Mr. Free poses some
25 significant risk of either flight or of harm to others or the

1 community?

2 MR. WILSON: No, Your Honor.

3 THE COURT: Okay. Mr. Free, your lawyer, Mr.
4 Dietz, has requested that I allow you to remain on bond on
5 the conditions of release that you have now. As you know
6 from the original sentencing in this case, in a few weeks
7 you'll receive a written communication from the Bureau of
8 Prisons directing you when and where to report.

9 If I grant your lawyer's request and allow you to
10 self-report, you at your expense, own expense, will have to
11 appear exactly when and where the Bureau of Prisons tells you
12 to do that. Do you understand that, sir?

13 THE DEFENDANT: I do, but previously, Your Honor,
14 we asked that I be incarcerated in Morgantown, West Virginia.

15 MR. DIETZ: Judge, I'll come back to that.

16 THE COURT: We'll come back to that. We're taking
17 the issues one at a time. Right now you understand --

18 THE DEFENDANT: I do, sir --

19 THE COURT: -- that I can't tell the Bureau of
20 Prisons where you should go, that I can make a
21 recommendation, and we'll talk about that in a minute. But
22 the Bureau of Prisons isn't required by law to follow that
23 recommendation. So for instance, it's possible the Bureau of
24 Prisons could direct that you appear and report in a distant
25 state, for instance, Alabama. I'm just picking one out of

1 the air.

2 So if you self-report, and they say you're going to
3 Alabama, you're going to have to get there on your own on
4 your own dime no later than the date and time they tell you.
5 Do you understand that, sir?

6 THE DEFENDANT: I do, Your Honor.

7 THE COURT: Okay. And Mr. Free, do you understand
8 if I grant your lawyer's motion, you have to abide by all of
9 the rules and regulations that are now in place regarding
10 your bond, that if you fail to appear as directed, either for
11 imposition of sentence or otherwise directed by the Court,
12 that would be treated as a violation of your bond. Your bond
13 would be revoked. You could be taken into custody
14 immediately, and in addition, you could be charged with an
15 additional federal crime over and above the ones you've been
16 convicted of, which would carry very substantial penalties
17 over and above the sentence that was imposed today. Do you
18 understand that?

19 THE DEFENDANT: I do, Your Honor.

20 THE COURT: Okay. Do I have your personal word,
21 Mr. Free, you're going to appear for execution of sentence,
22 that is, as directed by the Bureau of Prisons or otherwise by
23 the Court?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Okay. The Court finds by the requisite

1 evidentiary standard that it is appropriate to continue
2 Mr. Free's bond pending his reporting to the Bureau of
3 Prisons on all of the existing terms and conditions of
4 release.

5 Mr. Free, I'll authorize your self-report. I will
6 also put in a sentencing judgment that you're to report to
7 the U.S. Marshal's Office on the second floor of this
8 building not later than noon, March 15, 2017, unless prior to
9 that you have been told otherwise by the Bureau of Prisons.
10 If you have been, you're to follow the directions you receive
11 from the Bureau of Prisons.

12 But if we get to March 15, 2017, and you haven't
13 gotten instructions from the Bureau of Prisons, then by noon
14 that day you're to report to the Marshal's office on the
15 second floor of this building. Do you understand that, sir?

16 THE DEFENDANT: Report in what manner? For
17 incarceration at that point?

18 THE COURT: Yes.

19 THE DEFENDANT: Okay. Now I understand. Okay.
20 Yes, Your Honor.

21 THE COURT: So if you haven't heard from the Bureau
22 of Prisons come March 15, at noon that day you report to the
23 Marshal's Office in this building. They'll take you into
24 custody, and you'll be transmitted to the Bureau of Prisons.

25 However, if prior to that date, the Bureau of

1 Prisons tells you to report to a certain location on a
2 certain date, whatever it is, you're to follow the direction
3 of the Bureau of Prisons. Do you understand that, sir?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Okay. So bond and conditions of
6 release pending designation by the Bureau of Prisons will be
7 in place, and Mr. Free will be permitted to self-report.

8 Mr. Dietz, sir, other matters that we should take
9 up while we're here?

10 MR. DIETZ: Just, Your Honor, I would just ask that
11 the Court -- as the Court already pointed out, Mr. Free knows
12 the Court can't bind the Bureau of Prisons, but if the Court
13 can make the recommendation that he serve his time at FCI
14 Morgantown, that would be appreciated.

15 THE COURT: Mr. Wilson, does the United States have
16 any objection to the Court making that written
17 recommendation?

18 MR. WILSON: I do not, Your Honor.

19 THE COURT: I will make that written
20 recommendation, Mr. Dietz. Mr. Free, as we've indicated,
21 those determinations are made by the Bureau of Prisons. They
22 consider a number of factors. But given the proximity to
23 your home here in Western Pennsylvania, the Court believes it
24 is an appropriate recommendation to make to the Bureau of
25 Prisons, and I will make that.

1 Mr. Dietz, sir, other matters that we should take
2 up while we're here?

3 MR. DIETZ: No, Your Honor.

4 THE COURT: Mr. Wilson, sir, other matters we
5 should take up while we're here today?

6 MR. WILSON: Nothing. Thank you, Your Honor.

7 THE COURT: Mr. Lowers, sir, any other matters on
8 behalf of the Probation Office that you believe we should
9 address or take up while we're in court?

10 MR. LOWERS: No, Your Honor.

11 THE COURT: Thank you, Mr. Lowers.

12 Mr. Babik, do you have everything you need, sir?

13 MR. BABIK: I do, Judge.

14 THE COURT: Mr. Babik, sir, you may adjourn the
15 Court. Thank you, Counsel. I wish you luck, Mr. Free.
16 Thank you, Miss Rowe.

17 (Proceedings were concluded at 4:03 p.m.)

18 - - -

19 C E R T I F I C A T E

20

21 I, Deborah Rowe, certify that the foregoing is
22 a correct transcript from the record of proceedings in the
23 above-titled matter.

24

25 S/Deborah Rowe Deborah Rowe
Certified Realtime Reporter